

Hon. David G. Estudillo

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

LUIS APONTE and JENNIFER SELF,

Plaintiffs,

v.

MASON COUNTY FIRE PROTECTION  
DISTRICT NO. 16 a/k/a WEST MASON  
FIRE,

Defendant.

**Case No. 3:21-cv-5459-DGE**

**FIRST AMENDED COMPLAINT**

Plaintiffs Luis Aponte and Jennifer Self (collectively hereinafter “Plaintiffs”), by and through their undersigned attorneys of record, Vera P. Fomina, Damien N. Villarreal, and Kaitlyn M. Gould of Skidmore | Fomina, PLLC, allege as follows:

**I. PARTIES**

- 1.1 Plaintiff Luis Aponte (“Aponte”) is a resident of Mason County, Washington.
- 1.2 Plaintiff Jennifer Self (“Self”) is a resident of Pierce County, Washington.
- 1.3 Defendant Mason County Fire Protection District No. 16, also known as West
- 1.4 Mason Fire (the “Fire District”) was and is a public fire protection district organized under the laws of the state of Washington, providing emergency medical services in Mason County, Washington. All acts, omissions, and conduct complained of herein were performed or

1 committed by the Fire District's employees and/or agents, acting within the scope of their  
2 employment and authority, for which the Fire District has legal liability.

3 1.5 This Court has jurisdiction over the Fire District and the subject matter herein,  
4 and venue is proper in this Court.

5 **II. JURISDICTION AND VENUE**

6 2.1 This Court has jurisdiction over the parties because all parties are believed to have  
7 resided and/or transacted business in Mason County, Washington.

8 2.2 This Court has jurisdiction over the subject matter of this lawsuit action pursuant  
9 to RCW 2.08.010 and Washington's Wage Statutes.

10 2.3 Venue is proper under RCW 4.12.025.

11 2.4 At all times relevant hereto, Defendant employed Plaintiffs in Mason County,  
12 Washington, committed the unlawful acts alleged in this action in Mason County, Washington,  
13 and are employers as that term is used in RCW Chapters 49.12, 49.46, 49.48 and 49.52.

14 **III. FACTUAL ALLEGATIONS**

15 3.1 Plaintiffs incorporate herein all previous allegations in this Complaint.

16 3.2 The Fire District employed Aponte as a firefighter/emergency medical technician  
17 ("EMT") from approximately July 2018 to January 17, 2020.

18 3.3 The Fire District employed Self as a firefighter/EMT from approximately August  
19 2019 to February 12, 2020.

20 3.4 The Fire District compensated Aponte and Self (collectively "Plaintiffs") for their  
21 work as firefighters/EMTs by paying them as follows:

22 3.4.1 \$100.00 per shift for a 24-hour shift;

23 3.4.2 \$50.00 per shift for a 12-hour shift;

24 3.4.3 \$25.00 per shift for a 6-hour shift;

1           3.4.4   \$15.00 per hour in 2018 and \$20.00 per hour in 2019 and 2020 for  
2                   emergency medical services the Fire District provided under a service  
3                   contract for a local racetrack; and

4           3.4.5   Additional sums based upon on a point system determined by the Fire  
5                   District.

6           3.5     During their 24-hour, 12-hour, and 6-hour shifts, the Fire District required Plaintiffs  
7                   to be present at the fire station, ready to respond promptly to calls, and prepared mentally and  
8                   physically to respond to any potential type of emergency.

9           3.6     In 2020, the U.S. Department of Labor's Wage and Hour Division ("WHD")  
10                   investigated the Fire District for potential violations of the Fair Labor Standards Act ("FLSA"),  
11                   29 U.S.C. §201, et seq., covering the period of May 5, 2018 to May 2, 2020.

12           3.7     After conducting its investigation, WHD concluded the Fire District misclassified  
13                   the Plaintiffs and other firefighter/EMTs as volunteers and found the Fire District committed  
14                   twenty-nine (29) violations under the FLSA, including for failing to pay them \$7.25 per hour  
15                   (federal minimum wage) and failing to pay them proper overtime compensation for overtime hours  
16                   they worked. A true and correct copy (with FOIA exemption redactions) of WHD's Compliance  
17                   Action Report regarding its investigation of the Fire District's FLSA violations is attached hereto  
18                   as Exhibit A and incorporated herein by reference.

19           3.8     The Fire District implemented a formal policy and procedure system for the Fire  
20                   District's operations and adopted a Standard Operating Procedures manual ("SOP Manual").

21           3.9     The SOP Manual includes policies and procedures regarding workplace safety,  
22                   safety standards for firefighters, anti-harassment, and personnel disciplinary actions.

23           3.10    The SOP Manual contains policies and procedures that make promises of specific  
24                   treatment in specific situations.

25           3.11    The Plaintiffs justifiably relied upon the policies and procedures contained in the  
26                   SOP Manual and continued their employment.

1           3.12   Plaintiffs submitted multiple complaints to the Fire District about workplace and  
2 firefighter safety issues.

3           3.13   Plaintiffs submitted multiple complaints to the Fire District about workplace  
4 harassment.

5           3.14   On January 17, 2020, the Fire District terminated Aponte's employment under false  
6 pretenses.

7           3.15   On February 12, 2020, the Fire District terminated Self's employment under false  
8 pretenses.

9           3.16   The Fire District failed to comply with the provisions of its SOP Manual, including  
10 those regarding workplace safety, safety standards for firefighters, anti-harassment, and personnel  
11 disciplinary actions.

12           3.17   The Plaintiffs' complaints about workplace and/or firefighter safety issues were a  
13 substantial factor in the Fire District's decision to terminate their employment.

14                           **IV. CAUSES OF ACTION**

15                                   **FIRST CAUSE OF ACTION**  
16                                   **FLSA Violations (Minimum Wage)**

17           4.1    Plaintiffs incorporate herein all previous allegations in this Complaint.

18           4.2    At all relevant times, the Fire District was an employer covered under the FLSA.

19           4.3    At all relevant times, Plaintiffs were employees covered under the FLSA.

20           4.4    The Fire District failed to pay Plaintiffs the applicable minimum wage for all hours  
21 worked, in violation of the FLSA.

22           4.5    The Fire District's conduct described above was willful.

23           4.6    Plaintiffs are entitled to recover their unpaid minimum wages due and an equal  
24 amount as liquidated damages.

25           4.7    Plaintiffs are entitled to recover their attorney's fees incurred herein pursuant to 29  
26 U.S.C. §216.

**SECOND CAUSE OF ACTION**  
**Failure to Pay Minimum Wage and Compensate Plaintiffs for All Hours Worked**  
**RCW 49.52 and WAC § 296-128-550**

4.8 Plaintiffs re-allege and incorporates herein the preceding paragraphs of this Complaint.

4.9 At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of RCW 49.46.010(3).

4.10 Pursuant to RCW 49.46.020, Defendant is required to compensate Plaintiff for all hours worked.

4.11 Beginning January 1, 2018, and until January 1, 2019, every employer shall pay to each of his or her employees, who has reached the age of eighteen years, wages at a rate of not less than \$11.5 per hour.

4.12 Plaintiffs are non-exempt employees entitled to the protections of RCW 49.46.020.

4.13 Defendant's pay policies and practices violate Washington State's minimum wage requirements because they failed to pay Plaintiff for all hours worked.

4.14 Defendant did not fully compensate Plaintiffs for all hours.

4.15 Defendant's conduct described herein violates Washington State's wage and hour laws

4.16 Plaintiffs are entitled to recover their unpaid wages, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

**THIRD CAUSE OF ACTION**  
**FLSA Violations (Overtime)**

4.17 Plaintiffs incorporate herein all previous allegations in this Complaint.

4.18 At all relevant times, the Fire District was an employer covered under the FLSA.

4.19 At all relevant times, Plaintiffs were employees covered under the FLSA.

4.20 The Fire District failed to pay Plaintiffs proper overtime compensation for all work weeks in which they worked in excess of forty (40) hours, in violation of the FLSA. Alternatively,

1 the Fire District failed to pay Plaintiffs proper overtime compensation for all work weeks in which  
2 they worked in excess of fifty-three (53) hours, in violation of the FLSA.

3 4.21 The Fire District's conduct described above was willful.

4 4.22 Plaintiffs are entitled to recover their unpaid overtime compensation and an equal  
5 amount as liquidated damages.

6 4.23 Plaintiffs are entitled to recover their attorneys' fees incurred herein pursuant to  
7 29 U.S.C. §216.

8 **FOURTH CAUSE OF ACTION**  
9 **Failure to Pay Overtime Wages**  
10 **RCW 49.46.130 and WAC § 296-128-550**

11 4.24 Plaintiffs re-allege and incorporate herein the preceding paragraphs of this  
12 Complaint.

13 4.25 At all times relevant to this action, Plaintiffs were employed by Defendant within  
14 the meaning of RCW 49.46.010(3).

15 4.26 Pursuant to RCW 49.46.130, Defendant is required to compensate Plaintiffs for all  
16 overtime, which is calculated at one and one-half (1 1/2) times the regular rate of pay for hours  
17 worked in excess of forty (40) hours per week.

18 4.27 Plaintiffs were non-exempt employees entitled to the protections of RCW  
19 49.46.130.

20 4.28 During the relevant period, Defendant failed to compensate Plaintiffs for all  
21 overtime hours worked as required under the foregoing provisions of RCW 49.46.130, among  
22 other things: failing to pay overtime at one and one-half (1 1/2); and requiring, permitting or  
23 suffering Plaintiffs to work through meal and rest breaks.

24 4.29 In violation of RCW 49.52.050, Defendant acted willfully and with intent to deprive  
25 Plaintiffs of any part of their wages, shall be liable in a civil action by the aggrieved employee or  
26 his or her assignee to judgment for twice the amount of the wages unlawfully rebated or withheld  
by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees.

4.32 Defendant's conduct described herein violates Washington State wage and hour laws.

**FIFTH CAUSE OF ACTION**  
**Willful Refusal to Pay Wages - RCW 49.52.050**

4.35 RCW 49.52.050 provides that any employer or agent of any employer who “shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee” or who “[w]illfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employee is obligated to pay such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor.

4.37 RCW 49.52.070 provides that any employer who violates the provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount of damages withheld, plus attorneys' fees and costs.

1           4.38   Because of Defendant's willful and intentional nonpayment of wages, Plaintiffs  
2 have been deprived of compensation in an amount to be determined at trial and pursuant to RCW  
3 49.52.070 is entitled to recovery of twice the amount of such damages, including interest thereon,  
4 as well as attorneys' fees and costs.

5                                   **SIXTH CAUSE OF ACTION**  
6                                   **Failure To Pay Wages Owed at Termination**  
7                                   **RCW 49.48.010**

8           4.39   Plaintiffs re-allege and incorporates by reference each and every allegation set forth  
9 in the preceding paragraphs.

10          4.40   RCW 49.48.010 states that "when any employee shall cease to work for an  
11 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his  
12 employment shall be paid at the end of the established pay period."

13          4.41   By failing to pay Plaintiffs their earned wages Defendant violated RCW 49.48.010.

14          4.42   Plaintiffs have been denied compensation in an amount to be determined at trial  
15 and Plaintiffs are entitled to such damages, including interest thereon, as well as attorneys' fees  
16 and costs pursuant to RCW 49.48.030.

17                                   **SEVENTH CAUSE OF ACTION**  
18                                   **Unjust Enrichment**

19          4.43   Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
20 in the preceding paragraphs.

21          4.55   By the foregoing, Plaintiffs conferred a benefit upon Defendant by means of their  
22 labor.

23          4.56   Defendant had an appreciation and knowledge of that benefit.

24          4.57   The Defendant's acceptance or retention of the benefit without payment of its value  
25 is unjust under the circumstances.  
26



1           4.58    As a direct and proximate result of the foregoing, Plaintiffs have suffered economic  
2 damages in an amount to be proven at trial.

3                                   **EIGHTH CAUSE OF ACTION**  
4                                   **Wrongful Discharge in Violation of Public Policy**

5           4.59    Plaintiffs incorporate herein all previous allegations in this Complaint.

6           4.60    There is a clear mandate of public policy in Washington that employers shall ensure  
7 employee safety in the workplace.

8           4.61    There is a clear mandate of public policy in Washington that fire departments shall  
9 ensure certain safety standards for firefighters in their employ.

10          4.62    Plaintiffs reported what they reasonably believed to be unsafe conditions in their  
11 workplace and or violations of laws and policies related to safety standards for firefighters.

12          4.63    The Plaintiffs' reports regarding workplace and/or firefighter safety issues were a  
13 substantial factor in the Fire District's decision to terminate their employment.

14          4.64    As a result of the Fire District's wrongful termination of their employment in  
15 violation of public policy, the Plaintiffs have suffered economic damages, including lost wages  
16 and benefits, and non-economic damages for emotional distress, loss of enjoyment of life,  
17 humiliation, personal indignity, anger, and embarrassment.  
18

19                                   **I.   PRAYER FOR RELIEF**

20                   **WHEREFORE**, having set forth their Complaint against Defendant, Plaintiffs pray for the  
21 following relief:  
22

23          1.1    An award of economic damages in amounts to be proven at trial, including unpaid  
24 minimum wages, unpaid overtime compensation, back pay, front pay, and loss of benefits;

25          1.2    An award of liquidated damages equal to the amounts of unpaid minimum wages  
26 and unpaid overtime compensation;

/s/ Vera Fomina

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